

Law Enforcement Guide to the Virginia Freedom of Information Act



**Revised 2nd Edition
November, 2002**

**Published by the
Virginia Association of Chiefs of Police**

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Published by the
Virginia Association of Chiefs of Police
In cooperation with the
Virginia Department of Criminal Justice Services

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Dear Virginia public safety official:

In December, 1999, the Virginia Association of Chiefs of Police published the first edition of the "Law Enforcement Guide to the Virginia Freedom of Information Act." The booklet was distributed to law enforcement agencies across Virginia, and has been used extensively as a training manual and field guide for officers.

The Virginia Freedom of Information Act has been amended several times since 1999 by the Virginia General Assembly and sections of the Code of Virginia that address law enforcement agencies have been changed. The Association determined that a revised second edition of the booklet was needed, and has produced this new booklet to incorporate changes in the law and recommended best practices.

The Virginia Association of Chiefs of Police would like to thank Mr. Warren Carmichael, retired Public Information Officer for the Fairfax County Police Department, for authoring the original guide and this revised version. Special thanks also to the Virginia Criminal Justice Services Board, chaired by Roanoke Police Chief A. L. "Joe" Gaskins, and Director Leonard Cooke of the Department of Criminal Justice Services for their support of this effort.

We hope that this guide will help Virginia law enforcement agencies in understanding the Virginia Freedom of Information Act and in responding effectively to information requests from the media and the public.

Chief John T. White, President
Virginia Association of Chiefs of Police
November, 2002

Table of Contents

Background	1
Overview and Philosophy	1
Requests for Information	2
“Criminal Incident Information”	4
Arrest Records	5
Arrestee Photographs	6
Protected Information	6
Criminal Investigations Information	6
Other Investigations and Records	7
Other Exemptions	8
Insuring Compliance	10
Conclusion	10
Examples of Responses to Frequently Asked FOIA Requests	11
Police Department Criminal Incident Information Form	15
2003 Code of Virginia	17
§ 2.2-3700. Short title; policy.	17
§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to request; charges.	17
§ 2.2-3705. Exclusions to application of chapter.	20
§ 2.2-3706. Disclosure of criminal records; limitations.	32
§ 15.2-1722. Certain records to be kept by sheriffs and chiefs of police.	34
§ 16.1-301. Confidentiality of law-enforcement records; disclosures to school principal.	35
§ 16.1-309. Penalty.	36
§ 19.2-389. Dissemination of criminal history record information.	37
§ 19.2-390. Reports to be made by local law-enforcement officers, et al. to State Police; material submitted by other agencies.	41
§ 52-8.3. Disclosure of criminal investigative records and reports; penalty.	44

LAW ENFORCEMENT OFFICIALS’ GUIDE TO COMPLIANCE WITH THE VIRGINIA FREEDOM OF INFORMATION ACT

(Including Revisions Effective July 1, 2002)

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Background

The Virginia Freedom of Information Act (FOIA) (Section 2.2-3700) of the Code of Virginia), an open records and meetings law, was initially enacted in 1968. No significant revisions were made until 1988-90. At that time, the previous blanket exemption for criminal investigative records of law enforcement agencies was modified slightly to require release of “criminal incident information” for felonies, with certain exceptions. 1999 revisions made no changes regarding the release of criminal investigative records, but did consolidate all references to the release of law enforcement records in one place. In addition, a blanket FOIA exemption applying to all records maintained by law enforcement agencies under Section 15.2-1722 was deleted from that section, and new language exempting certain non-criminal investigation records was included within FOIA itself. Amendments in 2002 slightly expanded and clarified several exemptions. While FOIA covers both public records and public meetings, this guide primarily addresses questions relating to records, which are the questions most frequently confronting law enforcement officials.

Overview and Philosophy

Law enforcement agencies in Virginia continue to enjoy one of the broadest exemptions for releasing information of those in all of the states. The Virginia FOIA contains ample provisions to safeguard information essential to the accomplishment of the law enforcement mission. Adequate protection also is provided for sensitive information gathered by law enforcement agencies in the course of conducting investigations of non-criminal matters.

With the ability to withhold much information goes the responsibility not to abuse that discretion. This can best be accomplished by

adopting a “predisposition to disclose.” Using this approach, an agency identifies *only that information which must be withheld* rather than *that which must be released under FOIA*. It is important to keep in mind that FOIA does not *prohibit* the release of any information. Information which is exempted *may be released* at the agency’s discretion, and frequently an agency may find that it serves its best interests to do so. It is an established fact that law enforcement benefits when citizens are informed to the maximum extent possible.

Requests for Information

There is neither a requirement nor a prohibition that a FOIA request must be in writing. An agency may adopt a policy requiring written requests, which may be particularly desirable if a significant number of records or amount of information is involved. This insures that the requestor supplies the “reasonable specificity” that the act requires, and helps avoid instances where the requestor objects that the information provided was not what was requested, particularly if there are charges for research and photocopying.

There are some practical considerations in handling requests for information. Many verbal requests, particularly for a single record or limited information, can be fulfilled informally, easily and promptly. Some requestors may not know precisely what they are looking for and thereby request far more than they really need. It is good practice (and good public relations!) to work with them, pointing out what information is available and attempting to determine what their objectives are. However, a requestor has no obligation to state why information is being sought or for what purpose it will be used.

A 2002 amendment authorizes agencies to require an individual requesting records to provide his or her name and legal address. Such identification is not mandated, but if requested at the discretion of the agency, must be furnished by the requestor before the records are provided. FOIA has always stated that its provisions are applicable to citizens of the Commonwealth of Virginia and representatives of news media circulating or broadcasting in or into Virginia. Again, it is a matter of discretion on the part of the agency whether to grant or deny access to records to individuals who do not fulfill this qualification.

If a written request for information is received or if a verbal request is treated as a “formal” FOIA request, an initial response must

be made within five *working* days after the request is received. There must be one of the following four responses: (1) Make the requested record(s) available; (2) Decline in writing to furnish the requested records, citing the specific part of FOIA which exempts them (in the case of law enforcement records, it frequently will be one or more of the provisions of Section 2.2-3706, “Disclosure of criminal records; limitations”) or any other statute which prohibits their release (e. g., Section 16.1-301, which restricts release of juvenile records); (3) If only a portion of the records requested are exempt from disclosure, delete or excise the portion which need not be disclosed, and make the rest available accompanied by a written statement identifying that portion of FOIA or other statute that allows the exemption; (4) Respond in writing that the requested records cannot be identified within five working days, thereby allowing an additional seven days to identify the records and respond to the request. In highly unusual circumstances, a petition may be made to the circuit court for even more time to respond, if an accommodation cannot be reached between the agency and the requestor.

An agency may recover from the requestor *actual costs* associated with producing requested records, such as the direct cost for copying or for staff time spent on researching and locating the records. For many of the requests received by law enforcement agencies such costs may be minimal and may be waived in the interests of public relations and an informed citizenry. In the event that the estimated cost of producing the requested records exceeds \$200, the agency may request payment in advance of processing the request. *Actual costs* means precisely that, such as the actual cost per page of photocopying or the hourly pay rate of any staff member involved; there can be no charge for “overhead,” such as electricity, building maintenance, etc.

FOIA does not provide for “standing requests,” as for all future “criminal incident information” reports an agency may produce. FOIA can be applied only to records *which already are in existence*.

Persons incarcerated in either a state or federal correctional facility cannot request records under FOIA, but do retain the right to call for records which may be used as evidence in criminal prosecution in which they are involved.

FOIA does not require an agency to produce a new document if the requested information is not recorded. However, if the

request can be fulfilled by adapting an existing document it must be done. Examples would include making available selected fields from computerized data or redacting information from existing written reports to comply with requests for “criminal incident information.”

“Criminal Incident Information”

This is undoubtedly the type of information requested most frequently from law enforcement agencies, not only by the news media, but also by interested citizens and other requestors. As defined in FOIA, this is minimal information about an event, frequently much less than an agency would typically disclose. Note, for example, that suspect descriptions, which are commonly made public in such cases as robbery, are *not* required components of “criminal incident information.” Following is a discussion of each of the required components.

“General description of the criminal activity reported”: This means the nature of the offense, though the specific criminal charge which may be involved need not be specified. For example, “sexual assault” may be used rather than the more specific terms of rape, sodomy, sexual battery and similar offenses. “Drug law violation” could be used without specifying the substance involved or whether the case involved possession or distribution.

“The date and general location the alleged crime was committed”: A specific date should generally be provided, though in some cases a time frame may be appropriate. While the approximate time an event occurred is not required, it may be provided. Street and hundred block is one of the most frequently used methods of identifying location. However, if a street or block contains only several residences or buildings, use of a geographic, community or subdivision locator identity may be appropriate if protection of a victim’s identity is desired.

“Identity of the investigating officer”: Self-explanatory, but could include either an officer taking an initial report or a detective assigned to follow up on a case. While this information must be furnished if a requestor wants it, as a practical matter it generally is not needed as long as there is a point of contact for additional information, such as a public information officer.

“A general description of any injuries suffered or property damaged

or stolen”: Phrases such as “stab wound,” “life-threatening injuries,” or “injuries which are not life threatening” are appropriate. Property may be described in such terms as “construction materials,” “household goods,” or “assorted merchandise.”

Even this minimal amount of information may be withheld if one or more of the following circumstances applies should it be released: (1) Jeopardize an ongoing investigation or prosecution; (2) Jeopardize the safety of an individual; (3) Cause a suspect to flee or evade detection; (4) Result in the destruction of evidence. It is important to note that the “criminal incident information” may be withheld *only until the specified damage is no longer likely to occur from release of the information*. It should be noted that the exemption applying to jeopardizing an ongoing investigation applies not only to investigations being conducted by the agency in possession of the information, but also to investigations being conducted by other law enforcement agencies.

The act also states that nothing in the exemption section should be construed to prohibit the release of those portions of “criminal incident information” that are not likely to cause the specified damage.

While “criminal incident information” is required to be released for felonies only, *release of such information in misdemeanor cases is not prohibited*. Many agencies, particularly smaller ones where misdemeanors constitute a significant portion of their caseloads, may find it desirable to release information about such cases in the interest of informing the community about such problems as vandalism, vehicle tampering or shoplifting.

Arrest Records

With the exception of juvenile offenders, the identities of persons arrested, the charges against them, and the status of the charge or arrest must be released without exception. This applies to felony, misdemeanor and traffic arrests. Any chronological listing of adult arrests is a public document. However, the Code of Virginia, reflecting federal mandates, prohibits the dissemination of *criminal history record information* outside the law enforcement community by law enforcement agencies. Thus, the release of arrest information is commonly understood to apply to “*reasonably contemporaneous*” arrests. Requestors seeking older information may be advised to check court records, which are public.

Arrestee Photographs

It is required that photographs of adults who are arrested be released if doing so will not jeopardize an investigation. For example, a photograph may be withheld if the person is to appear in either a photo or live lineup to avoid possible tainting of the process. However, once these activities are concluded, the photo must be released. If several agencies are involved in an investigation, coordination is essential to insure that the release of a photo by one agency does not jeopardize the investigation of another agency. There are no requirements in FOIA relating either to size or quality of adult arrestee photographs. It is important to note that the requirement to release applies to *all* adult arrestees who are photographed, regardless of whether they are charged with a felony or a misdemeanor. Unprocessed film does not constitute an existing record and the requirement to release does not apply until a photograph has been developed and printed. However, a digital photograph is considered a record immediately upon its capture and storage, and is therefore required to be released subject to the conditions stated above.

Protected Information

FOIA provides law enforcement agencies considerable leeway in protecting the identities of individuals with whom they may be involved in a variety of ways. The identities of victims, witnesses or undercover officers need not be disclosed, but may be at the discretion of the agency unless otherwise prohibited by law. Identities of persons providing information about a crime or criminal activity under a promise of anonymity (such as through a Crime Solvers program) will not be disclosed. Records pertaining to neighborhood watch programs, including information pertaining to individual participants, are exempt from disclosure.

Also exempted from mandatory disclosure is information which reveals investigative techniques or procedures, though an agency has the option to disclose these should it so desire. Records of reports submitted in confidence to state and local law enforcement agencies and campus police departments of colleges and universities need not be disclosed.

Criminal Investigations Information

This information enjoys extensive protection. Exempt from disclosure

are all complaints, memoranda, correspondence and evidence relating to a criminal investigation (*except for "criminal incident information" relating to felonies*). A 2002 amendment expands this exemption to specifically include case files or reports and victim and witness statements. The latter exemption would be specifically applicable to information provided to victim/witness assistance services offered by law enforcement agencies. Commonwealth's attorneys are specifically defined as law enforcement officials, so criminal investigative materials remain protected when they are turned over to a prosecutor by a law enforcement agency.

Once again, it is important to note that a law enforcement agency *has the discretion to release these materials at any time*, even though FOIA extends the exemption to disclosure in perpetuity. In many cases it will be deemed essential to withhold portions of investigative reports even after a case has been adjudicated. On the other hand, there may be portions of some case investigations which it would be in the public interest to eventually disclose. FOIA leaves that decision within the sole purview of the law enforcement agency.

Other Investigations and Records

While stating that all records kept by law enforcement agencies as required under Section 15.2-1722 (Certain Records to Be Kept By Police Chiefs and Sheriffs) shall be subject to FOIA, there are some broad exemptions in furtherance of law enforcement purposes. The one with the most wide-ranging applicability relates to *noncriminal incident or other investigative reports or materials*. Those portions containing identifying information of a personal, medical or financial nature where the release of such information could jeopardize the safety or privacy of any person are exempted from disclosure. This is a very broad exemption which requires judicious application to avoid accusations of abuse through overly broad application. Examples of information which can and should be protected under this exemption are: reports of suicide attempts, medical information obtained during unattended death investigations, credit card numbers and other identifying information recorded on lost property reports, and response to domestic disputes where no violence occurs.

9-1-1 recordings are *not wholly exempted* under the law. While those involving criminal investigations are wholly protected, those involving noncriminal incidents are only to the extent described

above. For example, the words of a caller reporting a medical emergency could be excised from a recording (or deleted from a transcript) in order to protect individual privacy, but many of the words of the calltaker or dispatcher would be subject to release, as would such related records as response times.

Similar provisions, both as to exemption and release, apply to the in-car video recordings being utilized by an increasing number of law enforcement agencies. For example, a recording of a felony traffic stop and apprehension of a criminal suspect would be exempted as criminal investigative material. Those portions of a recording of a routine traffic stop containing identifying information regarding the occupants of the vehicle could be exempted while other portions would not. On the other hand, if there was a question of officer misconduct in connection with a traffic stop, the exemption pertaining to confidential administrative investigations would apply.

Exemptions are provided for: (1) Records of background investigations of applicants for law enforcement agency employment or other confidential administrative investigations, examples of which include internal affairs investigations or background checks for conservators of the peace; (2) Those portions of any records containing plans for or resources dedicated to undercover operations. For example, unmarked undercover vehicles could be excluded from agency's fleet roster, which would otherwise be releasable.

Personnel records, with the exception of salaries over \$10,000, and personnel disciplinary actions are exempted from disclosure.

Other records in the possession of a law enforcement agency, as well as correspondence, not falling into any of the previously discussed exempted categories, are subject to disclosure. This also applies to electronic messages. For example, an e-mail from a police chief to a deputy chief inquiring about certain aspects of a homicide investigation would be exempt from disclosure as criminal investigative materials. However, an e-mail from the chief to the deputy chief making unkind comments about the mayor would be subject to release under FOIA (and possibly be the subject of a headline in the local newspaper!).

Other Exemptions

FOIA contains several other specific exemptions applicable to

or of interest to law enforcement agencies in addition to those enumerated in Section 2.1 - 342.2. Found in Section 2.1 - 342.01, they include:

Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security of any governmental facility, building or structure or the safety of persons using such facility, building or structure. § 2.2-3705 (A) 69.

In 2002, this exemption was broadened to include *any* governmental building or facility or information storage system. Also expanded was the open meeting exemption to provide that a public body may hold a closed meeting for discussion of plans or briefings by staff members concerning actions taken to respond to terrorist activity or a related threat to public safety.

Law enforcement agency records containing specific tactical plans when their disclosure would jeopardize the safety or security of law enforcement personnel or the general public. Also included in this exemption are records of emergency services agencies containing specific tactical plans related to anti-terrorist activity. § 2.2-3705 (A) 57.

Any information describing the design, function, operation or access control features of any security system used to control access to or use of any automated data processing or telecommunications system. § 2.2-3705 (A) 45.

Information and records acquired during a review of any child death by the State Child Fatality Review Team. § 2.2-3705 (A) 54.

Confidential records, including victim identity, provided to staff of a rape crisis center or a program for battered spouses. § 2.2-3705 (A) 24.

Computer programs used to process data which may be included within official records. § 2.2-3705 (A) 18.

Insuring Compliance

Because of the specific knowledge required and the broad discretion granted to law enforcement agencies, not all the personnel of an agency can or should be expected to be able to respond to requests for information, whether made formally under FOIA or even casually by a citizen or reporter. There should be one or more knowledgeable individuals designated to respond to such requests. The identities and locations of these persons should be made known to all agency employees, especially “front line” employees such as officers or deputies, secretaries, station clerks, etc. The prompt, polite referral of the requestor to the person who can help them conveys a positive and professional image of the agency.

Conclusion

The underlying principle of FOIA is that the public has the right of access to the public’s business. Law enforcement activities must be, of necessity, one of the relatively few areas where that right of access must be limited. The Virginia FOIA, as amended, does this quite effectively to insure accomplishment of the law enforcement mission. Nonetheless, law enforcement agencies have an obligation to responsibly make available to the public, whether represented by a private citizen or a news media reporter, not only that information mandated as releasable by FOIA, but also additional information which will serve to enhance the public’s understanding of the agency and its work.

Advisory opinions regarding the applicability of FOIA to records in the possession of law enforcement agencies may be obtained from the staff of the Virginia Freedom of Information Advisory Council at 1-800-448-4100.

EXAMPLES OF RESPONSES TO FREQUENTLY ASKED FOIA REQUESTS

Misdemeanor – Criminal Incident Information Provided

In response to your request, enclosed is “criminal incident information” regarding the event you referenced. Under Section 2.2-3706 (B) of the Code of Virginia (Freedom of Information Act) release of such information is required for felony offenses only. The incident in question involves _____, which is a misdemeanor. However, as a courtesy to you, information regarding this event is being provided.

Misdemeanor – Request denied

This is in response to your Freedom of Information Act request. The information you have requested is considered to be criminal investigative information or material pertaining to a misdemeanor offense. As such, it is exempted from disclosure under Section 2.2-3706 (B) of the Code of Virginia (Freedom of Information Act). This information is exempted in perpetuity.

Criminal Investigative Reports – Subpoena Duces Tecum Required

Complete police criminal investigative reports are exempt from disclosure under Section 2.2-3706 (F) (1) of the Code of Virginia (Freedom of Information Act). There are released only in response to a subpoena duces tecum, which can be obtained only if there are active legal proceedings.

Request Granted – Generic

This is in response to your Freedom of Information request for information involving _____. Enclosed are copies of the information requested.

Personal Identifying Information Redacted

Pursuant to Section 2.2-3706 (G) (1) of the Code of Virginia (Freedom of Information Act) all identifying information of a personal, medical or financial nature has been redacted from the report of the noncriminal incident you have requested.

Extension

Your Freedom of Information request has been received by this office. You have requested information requiring research. Pursuant

to Section 2.2-3704 (B) (4) of the Code of Virginia (Freedom of Information Act), and additional seven working days (beyond the expiration of the initial five working day response time delineated in the Code) will be required to locate the documents involved and determine their status for release.

Fees over \$200 – Pay in Advance

The total amount of the costs involved in providing the information you have requested is estimated at \$_____. Since these costs will exceed \$200, you are required to pay the full estimated amount in advance, as provided in Section 2.2-3704 (F) of the Code of Virginia (Freedom of Information Act). No further processing of your request will be completed until payment in the amount of \$_____ is mailed to or made in person at _____. Please include a copy of this letter so that the payment will be properly credited to this request.

Federal FOIA Not Applicable

You are requesting records subject to the Federal Freedom of Information Act (Title 5, U. S. C. Section 552). The _____ is not a federal agency and the provisions of this act are not applicable. This agency is subject to the Virginia Freedom of Information Act (Section 2.2-3700 of the Code of Virginia). Requests for federal records should be made to the appropriate federal agency.

Denied – Exempt Investigative Materials

The information you have requested is considered to be criminal investigative information or material. As such it is exempted from disclosure under Section 2.2-3706 (B) of the Code of Virginia (Freedom of Information Act).

Request from Nonresident of Virginia – Request Denied

This letter is in response to your request for _____. Pursuant to Section 2.2-3704 (A) of the Code of Virginia (Freedom of Information Act) only residents of the Commonwealth of Virginia or representatives of news media circulating or broadcasting in or into Virginia may obtain information under Virginia FOIA. You may not attempt to obtain this information using the federal Freedom of Information Act (Title 5 U. S. C. Section 552) because the _____ is not a federal agency and the provisions of the act are not applicable.

Nonresident of Virginia – Request Granted

Under Section 2.2-3704 (A) of the Code of Virginia (Freedom of Information Act), only residents of the Commonwealth of Virginia or representatives of news media circulating or broadcasting in or into Virginia may obtain information under Virginia FOIA. However, as a courtesy to you, we are providing the information you requested.

“Criminal Incident Information” Only Provided

In response to your Freedom of Information Act request, enclosed is “criminal incident information” regarding the event you referenced. The complete police report is considered to be criminal investigation information or material. As such, it is exempted from disclosure under Section 2.2-3706 (F) (1) of the Code of Virginia (Freedom of Information Act).

Request from Person Incarcerated in a State, Local or Federal Correctional Facility

In response to your request for records under the Virginia Freedom of Information Act, please be advised that Section 2.2-3705 (C) of the Code of Virginia (Freedom of Information Act) denied the right to exercise the provisions of the Act to any person incarcerated in any state, local or federal correctional facility.

Note: Incarcerated persons shall not be prevented from exercising their constitutionally protected rights, including rights to call for evidence in their favor in a criminal prosecution.

POLICE DEPARTMENT CRIMINAL INCIDENT INFORMATION FORM

Criminal Activity Reported:

Date of Occurrence:

General Location of Incident:

Investigating Officer:

Injuries Sustained (General Description):

Property Damaged/Stolen (General Description):

Name of Adult Arrestee*:

*(Only names of adult arrestees must be released. Names of suspects and names of juvenile arrestees are protected from release under the criminal incident information requirements.)

Note: The foregoing criminal incident information is provided as required by the Virginia Freedom of Information Act. Additional information may be provided, but is not required to be, at the discretion of the police department.

For Information Contact:

CODE OF VIRGINIA

§ 2.2-3700. Short title; policy.

A. This chapter may be cited as “The Virginia Freedom of Information Act.”

B. By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked.

The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law. This chapter shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth.

All public bodies and their officers and employees shall make reasonable efforts to reach an agreement with a requester concerning the production of the records requested.

Any ordinance adopted by a local governing body that conflicts with the provisions of this chapter shall be void.

(1968, c. 479, § 2.1-340; 1976, c. 467, § 2.1-340.1; 1989, c. 358; 1990, c. 538; 1999, cc. 703, 726; 2001, c. 844; 2002, c. 393.)

§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to request; charges.

A. Except as otherwise specifically provided by law, all public records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth. The custodian may require the requester to provide his name and legal address. The custodian of such records shall take all necessary precautions for their preservation and safekeeping.

B. A request for public records shall identify the requested records with reasonable specificity. The request need not make reference to this chapter in order to invoke the provisions of this chapter or to impose the time limits for

response by a public body. Any public body that is subject to this chapter and that is the custodian of the requested records shall promptly, but in all cases within five working days of receiving a request, make one of the following responses:

1. The requested records will be provided to the requester.

2. The requested records will be entirely withheld because their release is prohibited by law or the custodian has exercised his discretion to withhold the records in accordance with this chapter. Such response shall (i) be in writing, (ii) identify with reasonable particularity the volume and subject matter of withheld records, and (iii) cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.

3. The requested records will be provided in part and withheld in part because the release of part of the records is prohibited by law or the custodian has exercised his discretion to withhold a portion of the records in accordance with this chapter. Such response shall (i) be in writing, (ii) identify with reasonable particularity the subject matter of withheld portions, and (iii) cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records. When a portion of a requested record is withheld, the public body may delete or excise only that portion of the record to which an exemption applies and shall release the remainder of the record.

4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall be in writing and specify the conditions that make a response impossible. If the response is made within five working days, the public body shall have an additional seven work days in which to provide one of the three preceding responses.

C. Any public body may petition the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records and a response by the public body within the time required by this chapter will prevent the public body from meeting its operational responsibilities. Before proceeding with the petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

D. Subject to the provisions of subsections G and H, no public body shall be required to create a new record if the record does not already exist. However, a public body may abstract or summarize information under such terms and conditions as agreed between the requester and the public body.

E. Failure to respond to a request for records shall be deemed a denial of the request and shall constitute a violation of this chapter.

F. A public body may make reasonable charges for its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. The public body may also make a reasonable charge for the cost incurred

in supplying records produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than fifty acres. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen.

In any case where a public body determines in advance that charges for producing the requested records are likely to exceed \$200, the public body may, before continuing to process the request, require the requester to agree to payment of a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the requester.

G. Public records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data shall be made available to a requester at a reasonable cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases are combined or contain exempt and nonexempt records, the public body may provide access to the exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided by this chapter.

Public bodies shall produce nonexempt records maintained in an electronic database in any tangible medium identified by the requester, including, where the public body has the capability, the option of posting the records on a website or delivering the records through an electronic mail address provided by the requester, if that medium is used by the public body in the regular course of business. No public body shall be required to produce records from an electronic database in a format not regularly used by the public body. However, the public body shall make reasonable efforts to provide records in any format under such terms and conditions as agreed between the requester and public body, including the payment of reasonable costs. The excision of exempt fields of information from a database or the conversion of data from one available format to another shall not be deemed the creation, preparation or compilation of a new public record.

H. Every public body of state government shall compile, and annually update, an index of computer databases that contains at a minimum those databases created by them on or after July 1, 1997. "Computer database" means a structured collection of data or records residing in a computer. Such index shall be a public record and shall include, at a minimum, the following information with respect to each database listed therein: a list of data fields, a description of the format or record layout, the date last updated, a list of any data fields to which public access is restricted, a description of each format in which the database can be copied or reproduced using the public body's computer facilities, and a schedule of fees for the production of copies in each available form. The form, context, language, and guidelines for the indices and the databases to be indexed shall be developed by the Director of

the Department of Information Technology in consultation with the Librarian of Virginia and the State Archivist. The public body shall not be required to disclose its software security, including passwords.

(1968, c. 479, § 2.1-342; 1973, c. 461; 1974, c. 332; 1975, cc. 307, 312; 1976, cc. 640, 709; 1977, c. 677; 1978, c. 810; 1979, cc. 682, 684, 686, 689; 1980, cc. 678, 754; 1981, cc. 456, 464, 466, 589; 1982, cc. 225, 449, 452, 560, 635; 1983, cc. 372, 462, 607; 1984, cc. 85, 395, 433, 513, 532; 1985, cc. 81, 155, 502, 618; 1986, cc. 273, 291, 383, 469, 592; 1987, cc. 401, 491, 581; 1988, cc. 39, 151, 395, 411, 891, 902; 1989, cc. 56, 358, 478; 1990, cc. 217, 538, 721, 819, 968; 1991, cc. 213, 561; 1992, cc. 40, 150, 167, 200, 203, 207, 593, 612; 1993, cc. 205, 270, 296, 537, 552, 638, 750, 883; 1994, cc. 485, 532, 606, 839, 853, 918; 1995, cc. 299, 362, 499, 562, 638, 722, 812, 837; 1996, cc. 168, 469, 589, 599, 783, 786, 794, 855, 862, 902, 905, 1001, 1046; 1997, cc. 198, 295, 439, 567, 636, 641, 777, 782, 785, 838, 861; 1998, cc. 427, 891; 1999, cc. 438, 703, 726; 2001, c. 844; 2002, cc. 715, 830.)

§ 2.2-3705. Exclusions to application of chapter.

A. The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Confidential records of all investigations of applications for licenses and permits, and all licensees and permittees made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, or the Charitable Gaming Commission.
2. State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § 58.1-3.
3. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. However, no student shall have access to (i) financial records of a parent or guardian or (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, which are in the sole possession of the maker thereof and that are not accessible or revealed to any other person except a substitute.

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of eighteen years. For scholastic records of students under the age of eighteen years, the right of access may be asserted only by his legal guardian or parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic records of students who are emancipated or attending a state-supported institution of higher education, the right of access may be asserted by the student.

Any person who is the subject of any scholastic record and who is eighteen years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

4. Personnel records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of any personnel record and who is eighteen years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

5. Medical and mental records, except that such records may be personally reviewed by the subject person or a physician of the subject person's choice. However, the subject person's mental records may not be personally reviewed by such person when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being.

Where the person who is the subject of medical records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the medical records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Medical records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the medical records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall be open to inspection and copying as provided in § 2.2-3704. No such summaries or data shall include any patient-identifying information. Where the person who is the subject of medical and mental records is under the age of eighteen, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. In instances where the person who is the subject thereof is an emancipated minor or a student in a public institution of higher education, the right of access may be asserted by the subject person.

6. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the Attorney General; the members of the General Assembly or the Division of Legislative Services; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in Virginia. However, no record, which is otherwise open to inspection under this chapter, shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence.

As used in this subdivision:

"Working papers" means those records prepared by or for an above-named

public official for his personal or deliberative use.

"Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet Secretaries, and the Director of the Virginia Liaison Office; and those individuals to whom the Governor has delegated his authority pursuant to § 2.2-104.

7. Written advice of legal counsel to state, regional or local public bodies or the officers or employees of such public bodies, and any other records protected by the attorney-client privilege.

8. Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter that is properly the subject of a closed meeting under § 2.2-3711.

9. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment, or (iii) receipt of an honor or honorary recognition.

10. Library records that can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.

11. Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by a public body.

As used in this subdivision, "test or examination" shall include (a) any scoring key for any such test or examination and (b) any other document that would jeopardize the security of the test or examination. Nothing contained in this subdivision shall prohibit the release of test scores or results as provided by law, or limit access to individual records as provided by law. However, the subject of such employment tests shall be entitled to review and inspect all records relative to his performance on such employment tests.

When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, the test or examination shall be made available to the public. However, minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

12. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

13. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth.

14. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

15. Reports, documentary evidence and other information as specified in §§ 2.2-706 and 63.2-104.

16. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4 or § 62.1-134.1.

17. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services, and records and automated systems prepared for the Department's Bid Analysis and Monitoring Program.

18. Vendor proprietary information software that may be in the official records of a public body. For the purpose of this subdivision, "vendor proprietary software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.

19. Financial statements not publicly available filed with applications for industrial development financings.

20. Data, records or information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such data, records or information has not been publicly released, published, copyrighted or patented.

21. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by the political subdivision.

22. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from the Department of Business Assistance, the Virginia Economic Development Partnership, the Virginia Tourism Authority, or local or regional industrial or economic development authorities or organizations, used by the Department, the Partnership, the Authority, or such entities for business, trade and tourism development; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by the Partnership, where competition or bargaining is involved and where, if such records are made public, the financial interest of the governmental unit would be adversely affected.

23. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

24. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.

25. Computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth.

26. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management. However, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.

27. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § 28.2-204.

28. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

29. Records and writings furnished by a member of the General Assembly to a meeting of a standing committee, special committee or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of formulating advisory opinions to members on standards of conduct, or both.

30. Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but excluding the amount of utility service provided and the amount of money paid for such utility service.

31. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance with the authority specified in § 2.2-2638, or adopted pursuant to § 15.2-965, or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

32. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; and other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2. However, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

33. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other local government agency concerning persons who have applied for occupancy or who have occupied affordable dwelling units established pursuant to § 15.2-2304 or § 15.2-2305. However, access to one's own information shall not be denied.

34. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if disclosure of them would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions and provisions of the siting agreement.

35. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease.

36. Records containing information on the site specific location of rare, threatened, endangered or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body that has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exemption shall not apply to requests from the owner of the land upon which the resource is located.

37. Records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the State Lottery Department relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such official records have not been publicly released, published, copyrighted or patented. Whether released, published or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

38. Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv) and (v) shall be open to inspection and copying upon completion of the study or investigation.

39. Those portions of engineering and construction drawings and plans submitted for the sole purpose of complying with the Building Code in obtaining a building permit that would identify specific trade secrets or other information the disclosure of which would be harmful to the competitive position of the owner or lessee. However, such information shall be exempt only until the building is completed. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure.

40. Records concerning reserves established in specific claims administered by the Department of the Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-1832 et seq.) of Chapter 18 of this title, or by any county, city, or town.

41. Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

42. Reports and court documents required to be kept confidential pursuant to § 37.1-67.3.

43. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the (i) Auditor of Public Accounts; (ii) Joint Legislative Audit and Review Commission; (iii) Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline; or (iv) committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825. Records of completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person.

44. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or the expansion of existing clinical health services, acquisition of major medical equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

45. Documentation or other information that describes the design, function, operation or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.

46. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the

Surface Transportation Board and the Federal Railroad Administration.

47. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, relating to the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or provided to the retirement system under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system or the Rector and Visitors of the University of Virginia. Nothing in this subdivision shall be construed to prevent the disclosure of records relating to the identity of any investment held, the amount invested, or the present value of such investment.

48. Confidential proprietary records related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.

49. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

50. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

51. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information.

52. Information required to be provided pursuant to § 54.1-2506.1.

53. Confidential information designated as provided in subsection D of § 2.2-4342 as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

54. All information and records acquired during a review of any child death by the State Child Fatality Review team established pursuant to § 32.1-283.1, during a review of any child death by a local or regional child fatality review team established pursuant to § 32.1-283.2, and all information and records acquired during a review of any death by a family violence fatality review team established pursuant to § 32.1-283.3.

55. Financial, medical, rehabilitative and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

56. Confidential proprietary records that are voluntarily provided by a private entity pursuant to a proposal filed with a public entity or an affected local jurisdiction under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), pursuant to a promise of confidentiality from the responsible public entity or affected local jurisdiction, used by the responsible public entity or affected local jurisdiction for purposes related to the development of a qualifying transportation facility or qualifying project; and memoranda, working papers or other records related to proposals filed under the Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure Act of 2002, where, if such records were made public, the financial interest of the public or private entity involved with such proposal or the process of competition or bargaining would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of this subdivision, the terms "affected local jurisdiction", "public entity" and "private entity" shall be defined as they are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education Facilities and Infrastructure Act of 2002.

57. Plans to prevent or respond to terrorist activity, to the extent such records set forth specific tactics, or specific security or emergency procedures, the disclosure of which would jeopardize the safety of governmental personnel or the general public, or the security of any governmental facility, building, structure, or information storage system.

58. All records of the University of Virginia or the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, that contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would be harmful to the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

59. Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to § 32.1-276.4.

60. Records of the Virginia Commonwealth University Health System Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; data, records or information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; and the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and data, records or information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body or a private concern, when such data, records or information have not been publicly released, published, copyrighted or patented.

61. Confidential proprietary information or trade secrets, not publicly available, provided by a private person or entity to the Virginia Resources Authority or to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such information were made public, the financial interest of the private person or entity would be adversely affected, and, after June 30, 1997, where such information was provided pursuant to a promise of confidentiality.

62. Confidential proprietary records that are provided by a franchisee under § 15.2-2108 to its franchising authority pursuant to a promise of confidentiality from the franchising authority that relates to the franchisee's potential provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such records were made public, the competitive advantage or financial interests of the franchisee would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the franchisee shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reason why protection is necessary.

63. Records of the Intervention Program Committee within the Department of Health Professions, to the extent such records may identify any practitioner who may be, or who is actually, impaired to the extent disclosure is prohibited by § 54.1-2517.

64. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Chapter 3.1 (§ 51.5-12.1 et seq.) of Title 51.5, to the extent such records contain (i) medical or mental records, or other data identifying individual patients or (ii) proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly released, published, copyrighted or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

65. Information that would disclose the security aspects of a system safety program plan adopted pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety Oversight agency; and information in the possession of such agency, the release of which would jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway safety.

66. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Charitable Gaming Commission pursuant to subsection E of § 18.2-340.34.

67. Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College Savings Plan or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure or publication of information in a statistical or other form that does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

68. Any record copied, recorded or received by the Commissioner of Health in the course of an examination, investigation or review of a managed care health insurance plan licensee pursuant to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

69. Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security of any governmental facility, building or structure or the safety of persons using such facility, building or structure.

70. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to §§ 3.1-622 and 3.1-624.

71. Records of the Department of Environmental Quality, the State Water Control Board, State Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon

request, such records shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.

72. As it pertains to any person, records related to the operation of toll facilities that identify an individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

73. Records of the Virginia Office for Protection and Advocacy consisting of documentary evidence received or maintained by the Office or its agents in connection with specific complaints or investigations, and records of communications between employees and agents of the Office and its clients or prospective clients concerning specific complaints, investigations or cases. Upon the conclusion of an investigation of a complaint, this exclusion shall no longer apply, but the Office may not at any time release the identity of any complainant or person with mental illness, mental retardation, developmental disabilities or other disability, unless (i) such complainant or person or his legal representative consents in writing to such identification or (ii) such identification is required by court order.

74. Information furnished in confidence to the Department of Employment Dispute Resolution with respect to an investigation, consultation, or mediation under Chapter 10 (§ 2.2-1000 et seq.) of this title, and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

75. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1, submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

76. Records of the State Lottery Department pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations, and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed.

77. Records, information and statistical registries required to be kept confidential pursuant to §§ 63.2-102 and 63.2-104.

78. Personal information, as defined in § 2.2-3801, including electronic mail addresses, furnished to a public body for the purpose of receiving electronic mail from the public body, provided that the electronic mail recipient has requested that the public body not disclose such information. However, access shall not be denied to the person who is the subject of the record.

79. (For effective date, see note) All data, records, and reports relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such data, records, and reports that are in the possession of the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or security of the Program.

80. Communications and materials required to be kept confidential pursuant to § 2.2-4119 of the Virginia Administrative Dispute Resolution Act.

81. The names, addresses and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints made to a local governing body.

B. Neither any provision of this chapter nor any provision of Chapter 38 (§ 2.2-3800 et seq.) of this title shall be construed as denying public access to (i) contracts between a public body and its officers or employees, other than contracts settling public employee employment disputes held confidential as personnel records under subdivision 4. of subsection A; (ii) records of the position, job classification, official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to any officer, official or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees. The provisions of this subsection, however, shall not require public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

C. No provision of this chapter or Chapter 21 (§ 30-178 et seq.) of Title 30 shall be construed to afford any rights to any person incarcerated in a state, local or federal correctional facility, whether or not such facility is (i) located in the Commonwealth or (ii) operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.). However, this subsection shall not be construed to prevent an incarcerated person from exercising his constitutionally protected rights, including, but not limited to, his rights to call for evidence in his favor in a criminal prosecution.

D. Nothing in this chapter shall be construed as denying public access to the nonexempt portions of a report of a consultant hired by or at the request of a local public body or the mayor or chief executive or administrative officer of such public body if (i) the contents of such report have been distributed or disclosed to members of the local public body or (ii) the local public body has scheduled any action on a matter that is the subject of the consultant's report.

(1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518, 844; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830.)

§ 2.2-3706. Disclosure of criminal records; limitations.

A. As used in this section:

"Criminal incident information" means a general description of the criminal activity reported, the date and general location the alleged crime was

committed, the identity of the investigating officer, and a general description of any injuries suffered or property damaged or stolen.

B. Law-enforcement agencies shall make available upon request criminal incident information relating to felony offenses. However, where the release of criminal incident information is likely to jeopardize an ongoing investigation or prosecution, or the safety of an individual; cause a suspect to flee or evade detection; or result in the destruction of evidence, such information may be withheld until the above-referenced damage is no longer likely to occur from release of the information. Nothing in this subsection shall be construed to prohibit the release of those portions of such information that are not likely to cause the above-referenced damage.

C. Information in the custody of law-enforcement agencies relative to the identity of any individual, other than a juvenile, who is arrested and charged, and the status of the charge or arrest shall be released.

D. The identity of any victim, witness or undercover officer, or investigative techniques or procedures need not but may be disclosed unless disclosure is prohibited or restricted under § 19.2-11.2.

E. The identity of any individual providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed.

F. The following records are excluded from the provisions of this chapter, but may be disclosed by the custodian, in his discretion, except where such disclosure is prohibited by law:

1. Complaints, memoranda, correspondence, case files or reports, witness statements, and evidence relating to a criminal investigation or prosecution, other than criminal incident information as defined in subsection A;
2. Adult arrestee photographs when necessary to avoid jeopardizing an investigation in felony cases until such time as the release of the photograph will no longer jeopardize the investigation;
3. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators authorized pursuant to § 53.1-16 or § 66-3.1, and (iii) campus police departments of public institutions of higher education established pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23;
4. Portions of records of local government crime commissions that would identify individuals providing information about crimes or criminal activities under a promise of anonymity;
5. Records of local law-enforcement agencies relating to neighborhood watch programs that include the names, addresses, and operating schedules of individual participants in the program that are provided to such agencies under a promise of anonymity;
6. All records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment;
7. Records of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the

safety or security of law-enforcement personnel or the general public; and

8. All records of adult persons under (i) investigation or supervision by a local pretrial services agency in accordance with Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2; (ii) investigation, probation supervision or monitoring by a local community-based probation program in accordance with Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1; or (iii) investigation or supervision by state probation and parole services in accordance with Article 2 (§ 53.1-141 et seq.) of Chapter 4 of Title 53.1.

G. Records kept by law-enforcement agencies as required by § 15.2-1722 shall be subject to the provisions of this chapter except:

1. Those portions of noncriminal incident or other investigative reports or materials containing identifying information of a personal, medical or financial nature provided to a law-enforcement agency where the release of such information would jeopardize the safety or privacy of any person;
2. Those portions of any records containing information related to plans for or resources dedicated to undercover operations; or
3. Records of background investigations of applicants for law-enforcement agency employment or other confidential administrative investigations conducted pursuant to law.

H. In the event of conflict between this section as it relates to requests made under this section and other provisions of law, this section shall control.

(1999, cc. 703, 726, § 2.1-342.2; 2000, c. 227; 2001, c. 844; 2002, cc. 393, 715, 769, 830.)

§ 15.2-1722. Certain records to be kept by sheriffs and chiefs of police.

A. It shall be the duty of the sheriff or chief of police of every locality to insure, in addition to other records required by law, the maintenance of adequate personnel, arrest, investigative, reportable incidents, and noncriminal incidents records necessary for the efficient operation of a law-enforcement agency. Failure of a sheriff or a chief of police to maintain such records or failure to relinquish such records to his successor in office shall constitute a misdemeanor. Former sheriffs or chiefs of police shall be allowed access to such files for preparation of a defense in any suit or action arising from the performance of their official duties as sheriff or chief of police. The enforcement of this section shall be the duty of the attorney for the Commonwealth of the county or city wherein the violation occurs.

B. For purposes of this section, the following definitions shall apply:

“Arrest records” means a compilation of information, centrally maintained in law-enforcement custody, of any arrest or temporary detention of an individual, including the identity of the person arrested or detained, the nature of the arrest or detention, and the charge, if any.

“Investigative records” means the reports of any systematic inquiries or examinations into criminal or suspected criminal acts which have been committed, are being committed, or are about to be committed.

“Noncriminal incidents records” means compilations of noncriminal occurrences of general interest to law-enforcement agencies, such as missing persons, lost and found property, suicides and accidental deaths.

“Personnel records” means those records maintained on each and every individual employed by a law-enforcement agency which reflect personal data concerning the employee’s age, length of service, amount of training, education, compensation level, and other pertinent personal information.

“Reportable incidents records” means a compilation of complaints received by a law-enforcement agency and action taken by the agency in response thereto.

(1975, c. 290, § 15.1-135.1; 1979, c. 686; 1981, c. 284; 1997, c. 587; 1999, cc. 703, 726.)

§ 16.1-301. Confidentiality of law-enforcement records; disclosures to school principal.

A. The court shall require all law-enforcement agencies to take special precautions to ensure that law-enforcement records concerning a juvenile are protected against disclosure to any unauthorized person. The police departments of the cities of the Commonwealth, and the police departments or sheriffs of the counties, as the case may be, shall keep separate records as to violations of law other than violations of motor vehicle laws committed by juveniles. Such records with respect to such juvenile shall not be open to public inspection nor their contents disclosed to the public unless a juvenile fourteen years of age or older is charged with a violent juvenile felony as specified in subsections B and C of § 16.1-269.1. Notwithstanding any other provision of law, the chief of police or sheriff of a jurisdiction or his designee may disclose, for the protection of the juvenile, his fellow students and school personnel, to the school principal that a juvenile is a suspect in or has been charged with (i) a violent juvenile felony, as specified in subsections B and C of § 16.1-269.1; (ii) a violation of any of the provisions of Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; or (iii) a violation of law involving any weapon as described in subsection A of § 18.2-308.

B. Inspection of such records shall be permitted only by the following:

1. A court having the juvenile currently before it in any proceeding;
2. The officers of public and nongovernmental institutions or agencies to which the juvenile is currently committed, and those responsible for his supervision after release;
3. Any other person, agency, or institution, by order of the court, having a legitimate interest in the case or in the work of the law-enforcement agency;
4. Law-enforcement officers of other jurisdictions, by order of the court, when necessary for the discharge of their current official duties;
5. The probation and other professional staff of a court in which the juvenile is subsequently convicted of a criminal offense for the purpose of a presentence report or other dispositional proceedings, or by officials of penal institutions and other penal facilities to which he is committed, or by a parole board in considering his parole or discharge or in exercising supervision over him;

6. The juvenile, parent, guardian or other custodian and counsel for the juvenile by order of the court; and

7. As provided in §§ 19.2-389.1 and 19.2-390.

C. The police departments of the cities and towns and the police departments or sheriffs of the counties may release, upon request to one another and to state and federal law-enforcement agencies, current information on juvenile arrests. The information exchanged shall be used by the receiving agency for current investigation purposes only and shall not result in the creation of new files or records on individual juveniles on the part of the receiving agency.

D. Nothing in this section shall prohibit the exchange of other criminal investigative or intelligence information among law-enforcement agencies.

(Code 1950, § 16.1-163; 1956, c. 555; 1977, cc. 559, 618; 1978, c. 740; 1981, c. 175; 1993, cc. 468, 926; 1994, cc. 859, 949; 1995, c. 752; 1996, cc. 755, 914; 1997, c. 430; 2000, c. 211; 2001, c. 770.)

§ 16.1-309. Penalty.

A. Except as provided in §§ 16.1-299, 16.1-300, 16.1-301, 16.1-305 and 16.1-307, any person who (i) files a petition, (ii) receives a petition or has access to court records in an official capacity, (iii) participates in the investigation of allegations which form the basis of a petition, (iv) is interviewed concerning such allegations and whose information is derived solely from such interview or (v) is present during any court proceeding, who discloses or makes use of or knowingly permits the use of identifying information not otherwise available to the public concerning a juvenile who is suspected of being or is the subject of a proceeding within the jurisdiction of the juvenile court pursuant to subdivisions 1 through 5 of subsection A of § 16.1-241 or who is in the custody of the State Department of Juvenile Justice, which information is directly or indirectly derived from the records or files of a law-enforcement agency, court or the Department of Juvenile Justice or acquired in the course of official duties, shall be guilty of a Class 3 misdemeanor.

B. The provisions of this section shall not apply to any law-enforcement officer or school employee who discloses to school personnel identifying information concerning a juvenile who is suspected of committing or has committed a delinquent act that has met applicable criteria of § 16.1-260 and is committed or alleged to have been committed on school property during a school-sponsored activity or on the way to or from such activity, if the disclosure is made solely for the purpose of enabling school personnel to take appropriate disciplinary action within the school setting against the juvenile. Further, the provisions of this section shall not apply to school personnel who disclose information obtained pursuant to §§ 16.1-305.1 and 22.1-288.2, if the disclosure is made solely to enable school personnel to take appropriate actions within the school setting with regard to the juvenile or another student.

(1977, c. 559; 1978, c. 626; 1979, c. 481; 1989, cc. 520, 733; 1993, cc. 645, 889; 1994, cc. 835, 913; 1996, cc. 755, 914.)

§ 19.2-389. Dissemination of criminal history record information.

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every thirty days;
2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements and/or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;
3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;
4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;
5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;
6. Individuals and agencies where authorized by court order or court rule;
7. Agencies of any political subdivision of the Commonwealth for the conduct of investigations of applicants for public employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;
8. Public or private agencies when and as required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual with whom the agency is considering placing a child on an emergency, temporary or permanent basis pursuant

to § 63.2-901.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;
10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including but not limited to, issuing visas and passports;
11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America, (ii) a volunteer fire company or volunteer rescue squad, (iii) the Volunteer Emergency Families for Children, (iv) any affiliate of Prevent Child Abuse, Virginia, or (v) any Virginia affiliate of Compeer;
12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes approved by family day-care systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719 to 63.2-1721, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;
13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § 19.2-83.1;
14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery Law (§ 58.1-4000 et seq.);
15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to the limitations set out in subsection E;
16. Licensed homes for adults, licensed district homes for adults, and licensed adult day-care centers for the conduct of investigations of applicants for compensated employment in licensed homes for adults pursuant to § 63.2-1720, in licensed district homes for adults pursuant to §

63.1-189.1, and in licensed adult day-care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in § 4.1-103.1;

18. The State Board of Elections and authorized officers and employees thereof in the course of conducting necessary investigations with respect to registered voters, limited to any record of felony convictions;

19. The Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-176, 19.2-177.1, 19.2-182.2, 19.2-182.3, 19.2-182.8 and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first offenders under § 18.2-251, or (iii) services to offenders under §§ 18.2-51.4, 18.2-266 or § 18.2-266.1;

21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Mental Health, Mental Retardation and Substance Abuse Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

22. The Department of Mental Health, Mental Retardation and Substance Abuse Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or parochial elementary or secondary schools which are accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public and nonprofit private colleges and universities for the purpose of screening individuals who are offered or accept employment;

25. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment pursuant to § 37.1-197.2;

26. Executive directors of behavioral health authorities as defined in § 37.1-243 for the purpose of determining an individual's fitness for employment pursuant to § 37.1-197.2;

27. The Commissioner of the Department of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

28. Authorized officers or directors of agencies licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 by the Department of Mental Health, Mental Retardation and Substance Abuse Services for the purpose of determining if any applicant who accepts employment in any direct consumer care position has been convicted of a crime that affects their fitness to have responsibility for the safety and well-being of persons with mental illness, mental retardation and substance abuse pursuant to §§ 37.1-183.3 and 37.1-197.2;

29. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

30. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime; and

31. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record

information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision 15 of subsection A shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02 and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities, licensed district homes for adults, and licensed adult day-care centers pursuant to subdivision 16 of subsection A shall be limited to the convictions on file with the Exchange for any offense specified in § 63.1-189.1 or § 63.2-1720.

(Code 1950, § 19.1-19.2; 1966, c. 669; 1968, c. 537; 1970, c. 118; 1975, c. 495; 1976, c. 771; 1977, c. 626; 1978, c. 350; 1979, c. 480; 1981, c. 207; 1985, c. 360; 1987, cc. 130, 131; 1988, c. 851; 1989, c. 544; 1990, c. 766; 1991, c. 342; 1992, cc. 422, 641, 718, 746, 791, 844; 1993, cc. 48, 313, 348; 1994, cc. 34, 670, 700, 830; 1995, cc. 409, 645, 731, 781, 809; 1996, cc. 428, 432, 747, 881, 927, 944; 1997, cc. 169, 177, 606, 691, 721, 743, 796, 895; 1998, cc. 113, 405, 445, 882; 1999, cc. 383, 685; 2001, cc. 552, 582; 2002, cc. 370, 587, 606.)

§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace, clerks of court, Secretary of the Commonwealth and Corrections officials to State Police; material submitted by other agencies.

A. 1. Every state official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law-enforcement officer or conservator of the peace having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on forms provided by it, of any arrest, including those arrests involving the taking into custody of, or service of process upon, any person on charges resulting from an indictment, presentment or information, the arrest on capias or warrant for failure to appear, and the service of a warrant for another jurisdiction, on any of the following charges:

- a. Treason;
- b. Any felony;
- c. Any offense punishable as a misdemeanor under Title 54.1; or
- d. Any misdemeanor punishable by confinement in jail under Title 18.2 or 19.2, except an arrest for a violation of § 18.2-119, Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2, Article 2 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2, or any similar ordinance of any county, city or town.

The reports shall contain such information as is required by the Exchange and shall be accompanied by fingerprints of the individual arrested. Fingerprint cards prepared by a law-enforcement agency for inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the appropriate bureau.

2. For persons arrested and released on summonses in accordance with § 19.2-74, such report shall not be required until (i) a conviction is entered and no appeal is noted or if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (ii) the court dismisses the proceeding pursuant to § 18.2-251; or (iii) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. Upon such conviction or acquittal, the court shall remand the individual to the custody of the office of the chief law-enforcement officer of the county or city. It shall be the duty of the chief law-enforcement officer, or his designee who may be the arresting officer, to ensure that such report is completed after a determination of guilt or acquittal by reason of insanity. The court shall require the officer to complete the report immediately following the person's conviction or acquittal, and the individual shall be discharged from custody forthwith, unless the court has imposed a jail sentence to be served by him or ordered him committed to the custody of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

B. Within seventy-two hours following the receipt of (i) a warrant or capias for the arrest of any person on a charge of a felony or (ii) a Governor's warrant of arrest of a person issued pursuant to § 19.2-92, the law-enforcement agency which received the warrant shall enter the person's name and other appropriate information required by the Department of State Police into the "information systems" known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the National Crime Information Center (NCIC), maintained by the Federal Bureau of Investigation. The report shall include the person's name, date of birth, social security number and such other known information which the State Police or Federal Bureau of Investigation may require. Where feasible and practical, the magistrate or court issuing the warrant or capias may transfer information electronically into VCIN. When the information is electronically transferred to VCIN, the court or magistrate shall forthwith forward the warrant or capias to the local police department or sheriff's office. When criminal process has been ordered destroyed pursuant to § 19.2-76.1, the law-enforcement agency destroying such process shall ensure the removal of any information relating to the destroyed criminal process from the VCIN and NCIC systems.

C. The clerk of each circuit court and district court shall make a report to the Central Criminal Records Exchange of (i) any dismissal, indefinite postponement or continuance, charge still pending due to mental incompetency or incapacity, nolle prosequi, acquittal, or conviction of, including any sentence imposed, or failure of a grand jury to return a true bill as to, any person charged with an offense listed in subsection A, including any action which may have resulted from an indictment, presentment or information, and (ii) any adjudication of delinquency based upon an act which, if committed by an adult, would require fingerprints to be filed pursuant to subsection A. In the case of offenses not required to be reported to the Exchange by subsection A, the reports of any of the foregoing dispositions shall be filed by the law-enforcement agency making the arrest with the arrest record required to be maintained by § 15.2-1722. Upon conviction of any person, including juveniles tried and convicted in the circuit courts

pursuant to § 16.1-269.1, whether sentenced as adults or juveniles, for an offense for which registration is required as defined in § 19.2-298.1, the clerk shall within seven days of sentencing submit a report to the Sex Offender and Crimes Against Minors Registry. The report to the Registry shall include the name of the person convicted and all aliases which he is known to have used, the date and locality of the conviction for which registration is required, his date of birth, social security number, last known address, and specific reference to the offense for which he was convicted. No report of conviction or adjudication in a district court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction or adjudication has been nullified in any manner, he shall also make a report of that fact to the Exchange and, if appropriate, to the Registry. In addition, each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange or the Registry, or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange or Registry, as the case may be, any reversal or other amendment to a prior sentence or disposition previously reported. When criminal process is ordered destroyed pursuant to § 19.2-76.1, the clerk shall report such action to the law-enforcement agency that entered the warrant or capias into the VCIN system.

D. In addition to those offenses enumerated in subsection A of this section, the Central Criminal Records Exchange may receive, classify and file any other fingerprints and records of arrest or confinement submitted to it by any law-enforcement agency or any correctional institution.

E. Corrections officials, sheriffs, and jail superintendents of regional jails, responsible for maintaining correctional status information, as required by the regulations of the Department of Criminal Justice Services, with respect to individuals about whom reports have been made under the provisions of this chapter shall make reports of changes in correctional status information to the Central Criminal Records Exchange. The reports to the Exchange shall include any commitment to or release or escape from a state or local correctional facility, including commitment to or release from a parole or probation agency.

F. Any pardon, reprieve or executive commutation of sentence by the Governor shall be reported to the Exchange by the office of the Secretary of the Commonwealth.

G. Officials responsible for reporting disposition of charges, and correctional changes of status of individuals under this section, including those reports made to the Registry, shall adopt procedures reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible by the most expeditious means and in no instance later than thirty days after occurrence of the disposition or correctional change of status; and (ii) to report promptly any correction, deletion, or revision of the information.

H. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records Exchange shall notify all criminal justice agencies known to have previously received the information.

As used in this section, the term "chief law-enforcement officer" means the chief of police of cities and towns and sheriffs of counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by appropriate resolution or ordinance, in which case the local designation shall be controlling.

(Code 1950, § 19.1-19.3; 1966, c. 669; 1968, c. 724; 1970, c. 191; 1971, Ex. Sess., c. 107; 1974, c. 575; 1975, cc. 495, 584; 1976, cc. 336, 572, 771; 1978, cc. 467, 825; 1979, c. 378; 1981, c. 529; 1982, cc. 33, 535; 1990, cc. 100, 692; 1992, c. 391; 1993, cc. 448, 468, 926; 1994, cc. 362, 428, 432; 1996, cc. 429, 755, 806, 914; 1997, cc. 27, 509, 747, 801; 2001, cc. 516, 536, 565.)

§ 52-8.3. Disclosure of criminal investigative records and reports; penalty.

Any person employed by a law-enforcement agency or other governmental agency within the Commonwealth who has or has had access in an official capacity to an official written record or report submitted in confidence to the Department of State Police relating to an ongoing criminal investigation, and who uses or knowingly permits another to use such record or report for any purpose not consistent with the exclusions permitted in §§ 2.2-3705 and 2.2-3706, or other provision of state law, shall be guilty of a Class 2 misdemeanor.

The provisions of this section shall not be construed to impede or prohibit full access to information concerning the existence of any criminal investigation or to other verbal disclosures permitted by state police operating procedures.

(1981, c. 238; 1999, cc. 703, 726.)